

# **CONTRACT FOR AN ELECTRONIC FILE AND PAY SYSTEM AND SUPPORT FOR THE STATE OF IOWA DEPARTMENT OF REVENUE**

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CONTRACT NO. *BD80400S305*

PARTIES: State of Iowa Department of Revenue (hereinafter referred to as State), and First Data Government Solutions (Vendor).

**2.0** This Agreement is effective August 15, 2004, by and between First Data Government Solutions (Vendor), a corporation business form organized under the laws of the state of Delaware and authorized to do business in the state of Iowa. The Vendor's address is 11311 Cornell Park Drive; Suite 300; Cincinnati, OH 45242, and the Iowa Department of Revenue (State) is located at 1305 E. Walnut, Des Moines, IA.

## **2.1 ELEMENTS OF AGREEMENT**

A. These contractual terms and conditions relate to Request for Proposal (RFP) BD80400S305 for the services identified in the RFP.

As used herein the following terms are defined as follows:

Contract Administrator (CA): the primary point of contact for the State and the liaison between Revenue and other executive branch agencies or branches of State government and the Vendor(s).

Installation: the readiness to perform services under the RFP. Installation shall include, but is not limited to, hiring of employees, purchase or rental of appropriate space in which to perform the services, and the development and testing of any computer hardware systems and/or software programs which the State may require the Vendor to purchase or develop for use in performing services for the State as requested in the RFP.

Vendor: the business entity (corporation, partnership, sole proprietorship, and joint ventures) performing services for and on behalf of the State under this Agreement and includes the Vendor's agents, representatives, joint ventures, partners, subcontractors, and employees.

B. The initial term of the Agreement shall be three (3) years from the date of implementation of the Agreement, except as otherwise provided herein. At the sole discretion of the State, the Vendor may be granted an extension, or extensions, of the Agreement for a term, or terms not to exceed three (3) additional years from the date of expiration of the initial term of the Agreement. If the State elects to grant an extension(s) to the Vendor, it shall do so in writing not later than sixty (60) days prior to the expiration of the original term of this Agreement.

- C. The State shall pay the Vendor monthly, within the period of time provided for by applicable state statute, after receipt of Vendor's invoice for the services rendered by the Vendor in the prior calendar month. The payment shall be subject to any adjustments identified in this Agreement, liquidated damages or offsets pursuant to the terms and conditions as stated in this Agreement. The Vendor shall generate an invoice which indicates the information necessary to pay the Vendor for its activities in the prior calendar month and which shall be subject to the State's review and verification. The Vendor shall not be reimbursed for any costs incurred by the Vendor, including but not limited to, Workers Compensation costs or insurance premiums, unemployment compensation costs, taxes or other obligations of the Vendor associated with the provision of services requested under the RFP, except as agreed upon by the parties and incorporated herein. The monthly payment is the only payment for which the State is obligated under this Agreement.

For purposes of determining the monthly invoice amounts the Year 1 pricing shown on Worksheet C of the Vendors Cost Proposal (Revised August 4, 2004) shall be effective for all transactions completed in calendar year 2005. Year 2 pricing shall apply to all transactions completed in calendar year 2006. Year 3 pricing will be in effect for all transactions completed in calendar year 2007. If the Department extends the contract beyond the initial three year period, the price quotes for Years 4, 5 and 6 will be in effect for all transactions completed in calendar year 2008, 2009 and 2010 respectively.

The State will pay to Vendor on or about January 2005, when the system for processing withholding tax transactions is accepted into production, the sum of two hundred thousand dollars (\$200,000.00). The State will pay to Vendor on or about June 2005 the sum of two hundred thousand dollars (\$200,000.00), when the sales tax processing portion of the system is accepted into production. A final payment for system development and implementation will be made to the Vendor in November 2005, assuming successful completion of the project.

- D. The Vendor shall utilize its best efforts to implement the services requested under the RFP as soon as the State notifies the Vendor that the Vendor may commence service. The State reserves the right to accelerate or postpone service from the Vendor provided the State gives the Vendor reasonable notice that the State intends to accelerate or postpone service.
- E. The following documents containing specifications for services requested under RFP BD80400S305 and this Agreement are listed below:
1. This Agreement together with any exhibits, attachments or addenda, or project plans attached hereto and incorporated herein by reference.
  2. The Vendor's Cost Proposal in response to RFP BD80400S305 attached hereto and incorporated herein by reference.

3. The Request for Proposal BD80400S305, including any and all addenda, tables, exhibits and appendices, and the Vendor's Response to the Request for Proposal, incorporated herein by reference as if set forth fully in this Agreement.

In the event of a conflict among the incorporated or attached documents, the order of precedence shall be as set forth above.

- F. Vendor's proposal as agreed between the State and the Vendor, including the price, is hereby accepted and the Vendor's performance shall conform to such proposal.
- G. Changes in the provisions of this Agreement may be made only in writing signed by all parties hereto.
- H. This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding this Agreement shall not be binding upon either party except to the extent incorporated herein. Both parties in writing must agree upon any modifications to this Agreement.
- I. All notices required to be given by either party to the other in accordance with the terms of this Agreement shall be directed as follows:

STATE:

Name: Richard Jacobs, Contract Administrator  
Address: Iowa Department of Revenue  
Hoover State Office Building  
Des Moines, IA 50319  
Phone Number: (515) 281-3488  
Facsimile Transmission Number: (515) 242-6040

VENDOR:

Name: Tyler Lloyd, Business Development Manager  
Address: 28 W. Knapp Street  
Rice Lake, WI 54868  
Phone Number: (715) 236-7563  
Facsimile Transmission Number: (715) 234-1801

- J. The Vendor's Response to the RFP and its Cost Proposal are hereby accepted and the Vendor's performance shall conform thereto. All of the Vendor's exceptions to the RFP are hereby denied and shall be considered inapplicable to this Agreement except those fully described below:

## **2.2 INSTALLATION AND READINESS TO PERFORM**

- A. The Vendor shall, immediately upon execution of this Agreement, begin its preparation to perform the services requested under the RFP, and shall begin providing service

not later than January 1, 2005. The implementation schedules for phased in services shall be negotiated by the State and the Vendor and shall become an addendum to this Agreement or shall be incorporated into the project as agreed by the parties. The State and the Vendor shall participate in and cooperate with one another in testing computer hardware and software systems and programs which the Vendor shall develop on behalf of the State or which are provided to the Vendor by the State for use in performing the services requested under the RFP.

- B. The State shall not be obligated for monthly payments under this Agreement until the State accepts service from the Vendor.
- C.
  - 1. If the Vendor fails to make timely, substantial and material progress toward completion of the Installation necessary to provide service to the State by the date specified in RFP Section 2.2, Sub-Section A., the State may, in its sole discretion, terminate the Agreement with the Vendor following notice of default and opportunity to cure as provided in RFP Section 2.5. In the event the Vendor fails to complete installation as required herein, and the State terminates the Agreement with the Vendor, the performance bond as required in RFP Section 2.14 shall be forfeited to the State.
  - 2. If the Vendor fails to make timely, substantial and material progress toward completion of installation by the date specified in RFP Section 2.2, Sub-Section A., and the State elects to continue the Agreement with the Vendor, the State may assess the Vendor liquidated damages for each partial or complete month in which the Vendor fails to complete Installation. The formula for calculating liquidated damages under this subsection shall be as follows: two dollars (\$2.00) multiplied by 50% of the applicable transactions processed by the Department during the period the failure continues. Liquidated damages imposed under this subsection shall be deducted from the Vendor's first monthly payment and subsequent monthly payments until the Vendor has paid all liquidated damages.

## **2.3 ACTS OF GOD (FORCE MAJEURE)**

The Vendor shall not be considered in default under any provision of this Agreement nor shall any liquidated damages be assessed if performance is delayed or made impossible by any causes beyond the control of and without the fault of the Vendor, including, but not limited to: acts of God, fires, floods, severe weather, epidemics or any other natural disaster, embargoes, or quarantines.

## **2.4 ASSIGNMENT OF AGREEMENT**

The Vendor shall not assign this Agreement to another person or entity without the prior written consent of the State, nor substitute subcontractors without the prior written consent of the State, which consent shall not be unreasonably withheld.

## **2.5 DEFAULT; REMEDIES OF STATE**

- A. The State declares, and the Vendor acknowledges, time is of the essence in the performance by the Vendor of the services requested under this Agreement. The State declares, and the Vendor acknowledges, the State may suffer damages due to a lack of performance by the Vendor.
- B. The State may declare the Vendor in default of its obligations under this Agreement for any of the following reasons:
  - 1. Failure by the Vendor to meet the Installation and readiness deadline as required in Section 2.2 herein.
  - 2. Failure by the Vendor to substantially and materially conform to the specifications required by the RFP BD80400S305 and the Vendor's response to the RFP BD80400S305.
  - 3. A breach of any term of this Agreement.
  - 4. Non-performance of this Agreement.

Except as provided elsewhere herein, the State shall issue a written notice of default providing the Vendor with a fifteen-day period in which the Vendor shall have an opportunity to propose a plan to cure which is acceptable to State, provided that cure is possible and feasible. Time allowed for cure of default shall not diminish or eliminate the Vendor's liability for liquidated damages.

- C. If, after opportunity to cure, the default remains, the State may do one or more of the following:
  - 1. Exercise any remedy provided by law;
  - 2. Terminate the Agreement and obtain forfeiture of the Vendor's performance bond;
  - 3. Seek liquidated damages from the Vendor, as described herein.
- D. A breach of this Agreement, which is the result of a subcontractor's conduct, negligence or failure to perform, shall not excuse the Vendor from the provisions of this section.
- E. Should the State obtain a money judgment against the Vendor as a result of a breach of this Agreement, the Vendor consents to such judgment being set-off against moneys owed the Vendor by the State under this Agreement or any other Agreement between the Vendor and the State.
- F. Amounts due to the State as liquidated damages or any other damages may be deducted by the State without a judgment or any court action from any money payable

to the Vendor pursuant to this Agreement or any other Agreement between the Vendor and the State. The State shall notify the Vendor in writing of any claim for liquidated damages or any other damages on or before the date the State deducts such sums from money payable to the Vendor.

## **2.6 DEFAULT; REMEDIES OF VENDOR**

Should the Vendor consider the State to be in default of its obligations, the Vendor shall issue a written notice of default providing therein for a fifteen (15) day period in which the State shall have an opportunity to cure, provided that cure is possible and feasible. If, after opportunity to cure, the default remains, the Vendor may exercise any remedy provided by law.

## **2.7 TERMINATION DUE TO NON-APPROPRIATION**

Notwithstanding any other provision of this Agreement, if funds anticipated for the continued fulfillment of the Agreement are, at any time, not forthcoming or are insufficient, either through the failure of the State to appropriate funds, or through discontinuance or material alteration of the program for which funds were provided, the State shall give the Vendor written notice as soon as practicable documenting the lack of funding, discontinuance or program alteration. Unless otherwise agreed to by the parties, the Agreement shall terminate on the last day of the fiscal year for which appropriations were available. However, in the event that an appropriation or other funding to cover the cost of this Agreement becomes available within sixty (60) days subsequent to termination under this section, the State agrees to re-enter the Agreement with the terminated Vendor under the same provisions, terms and conditions as the original Agreement.

## **2.8 TERMINATION FOR CONVENIENCE**

- A. The State may terminate this Agreement for convenience for any reason upon One Hundred Eighty (180) days written notice to the Vendor of the State's intent to terminate.
- B. The Vendor may terminate this Agreement for convenience for any reason upon One Hundred Eighty (180) days written notice to the State of the Vendor's intent to terminate.

## **2.9 REMEDIES OF THE VENDOR IN THE EVENT OF TERMINATION FOR NON- APPROPRIATION OR TERMINATION FOR CONVENIENCE**

In the event of termination of this Agreement due to non-appropriation under Section 2.7 above, or for convenience pursuant to Section 2.8 above, the Vendor's sole and exclusive remedy is to recover and possess its own equipment used in the performance of the Agreement. In the event of termination of this Agreement for any reason, the State shall not be liable for the payment of Unemployment Compensation to the Vendor's employees, nor shall the State be liable to the Vendor for payment of Workers' Compensation claims which may extend beyond the date on which this Agreement terminates or for any other costs incurred by the Vendor in its performance of the Agreement, except amounts, if any, due and owing to the Vendor by the State on the date of termination.

## **2.10 VENDOR DUTIES**

- A. All records of the Vendor relating to this Agreement shall be retained for five (5) years following the date of final payment under this Agreement. Nothing in this Agreement shall be construed to permit or authorize the Vendor to destroy or eliminate documents, records, or files in violation of any statute or rule governing the Vendor's retention of records.
- B. The Vendor agrees the Auditor of the State of Iowa, Internal Auditor of the Iowa Department of Revenue, or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representatives of the United States Government, shall have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, and records of the Vendor relating to the Vendor's performance under this Agreement. Additionally, the Vendor shall permit reasonable access to Vendor's facilities for the purpose of observing and inspecting the operation of the Vendor, including Vendor security procedures and processes. The Vendor shall not impose any charges for access to its books and records regarding its performance under this Agreement, and shall fully cooperate with authorized representatives in the examination or audit of books and records. Neither the State nor the Vendor shall impose a charge for audit or examination of the Vendor's books and records.

The State will endeavor to provide the Vendor with reasonable notice and to conduct the activities during normal business hours. Nothing shall be construed as restricting the rights of the State to conduct these activities at times of its choosing and without notice if, in the opinion of the State, circumstances warrant immediate review.

- C. The Vendor shall comply with the applicable provisions of federal, state and local laws and regulations to insure no employee or applicant for employment is discriminated against because of race, religion, color, age, sex, national origin, or disability. The Vendor shall have an affirmative action plan on file.

- D. The Vendor warrants no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents retained for the purpose of securing business. In the event of breach of this subsection, which shall be considered a material term of this Agreement, the State shall have, in addition to the remedies contained in Section 2.5 above, a right to liquidated damages in the sum of \$100,000. Such damages are not a penalty and would be assessed only because the monetary damage to the State's competitive bidding process resulting from breach of this subsection is difficult, if not impossible, to measure.
- E. In the event the Vendor utilizes subcontractors for the purpose of fulfilling its obligations under this Agreement, all such subcontractors shall be procured with appropriate attention to the principles of competition and quality of workmanship. However, the Vendor shall not be required to adhere to the State's competitive bidding procedures in its selection of subcontractors. All records relating to subcontracts shall be retained as required in Section 2.10, Sub-Section A., and available for audit or examination as required in Section 2.10, Sub-Section B.
- F. If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally responsible for fulfilling the activities and obligations of this Agreement, and for any default under this Agreement.
- G. The Vendor shall provide and pay for all labor and transportation necessary for the Vendor to provide the services required under this Agreement, except as otherwise provided in this Agreement. The State may elect to reimburse Vendor for out-of-pocket expenses relating to materials, equipment, tools, machinery along with storage and transportation of same required to perform services under this contract provided Vendor has obtained prior approval for reimbursement from State.
- H. 1. The State declares and the Vendor acknowledges the Vendor shall, from time to time, be provided access to confidential information as defined by the Iowa Code, administrative rule, Department of Revenue policy or procedures and IRS Regulations while performing duties under this Agreement. Any tax return or other information made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as required in the performance this Agreement, and subject to the terms and conditions contained in the Agreement.

The State declares and the Vendor acknowledges the purpose of this Agreement may include the Vendor electronically accessing the State's records as defined in Iowa Code chapter 22, and other data (inbound and outbound), and electronic filings (collectively Electronic Transactions) over public networks such as the Internet and/or secure, dedicated telecommunications networks. Electronic Transactions involving such public records or other data, however stored, maintained, or conducted by Vendor on State's behalf for the purposes enunciated



in the Agreement does not represent the assignment or sale of the records or other data to Vendor, nor may the Vendor pledge or obligate the records or data as security for a loan, mortgage, or any other financing transaction. The Vendor may not, outside of fulfilling its obligations to State, independently package, sell, or otherwise provide the State's data to any third party for consideration, monetary or other gain, nor make any other use of the data. By way of illustration and not by way of limitation, the Vendor shall not use the data to which it gains access in the performance of its obligations under the Agreement or this Amendment to sell, give, transfer or use the identities and/or addresses of the persons or entities identified as part of any activity to compile a mailing list or to solicit business or to use the data for other business activities.

2. Notwithstanding any other provision to the contrary, if this Agreement is terminated as a result of a breach of Section 2.10, Sub-Section H., Sub-Section 1., the Vendor's performance bond shall be forfeited to the State in addition to any other remedy which the State may elect to pursue.
3. State and Vendor hereby agree to the following confidentiality requirements. The confidentiality requirements shall apply to all aspects of the Agreement.
  - a. State and Vendor declare one to the other that some data, software programs, operating systems and platforms, including third party proprietary software and methodologies, copyrighted and patented information and other information including, but not limited to information contained in files and records however maintained and stored, as well as policies and activities are confidential (collectively Confidential Information). Both parties shall preserve the confidentiality of Confidential Information that may be revealed to the other and identified as confidential in its performance of this Contract.
  - b. Both Parties agree to protect all Confidential Information provided by one party to the other, and not to publish or disclose Confidential Information to any third party except as otherwise permitted in this Agreement. Both parties agree not to misuse, alter, destroy or make any use whatsoever of such information without the other party's written permission by using those methods and procedures normally used to protect one's own Confidential Information. Either party may permit its subcontractors or consultants who have a need to know in order to perform their duties on that party's behalf access to the other party's Confidential Information, provided that such subcontractors or consultants execute a confidentiality agreement. The State and the Vendor shall approve the form and content of any confidentiality agreement.
  - c. Confidential Information shall remain the property of the disclosing party, and the receiving party shall not be deemed by virtue of this Agreement or any access to the disclosing party's Confidential Information to have acquired any right or interest in or to any such Confidential Information. The receiving party agrees: (i) to hold the Confidential Information in strict confidence; (ii) to limit disclosure of the Confidential Information to the receiving party's own

employees having a need to know the Confidential Information for the purposes of this Agreement; (iii) not to disclose any Confidential Information to any third party unless otherwise permitted in this Agreement; (iv) to use the Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights under this Agreement; and (v) to notify the disclosing party promptly of any unauthorized use or disclosure of the Confidential Information and to cooperate with and assist the disclosing party in every reasonable way to stop or minimize such unauthorized use or disclosure.

- d. In the event of an attempted, threatened or actual breach of the terms and conditions governing Confidential Information, the non-breaching party may be entitled to injunctive relief and other measures to reasonably restrain further attempted, threatened or actual breach of the obligation. Such relief or measures shall be in addition to, and not in lieu of, any other rights and remedies available to the non-breaching party.
- e. In the event of a material breach of this provision, State may suspend this Agreement immediately upon notice to Vendor of default and may, in its sole discretion, terminate this Agreement with Vendor if the default remains uncured after seven (7) consecutive business days following notice to Vendor. However, if Vendor has complied with the conditions specified in this provision for safeguarding the State's Confidential Information, State will not terminate this Agreement if Vendor shall, within five (5) business days following notification of the breach, determine the cause or source of the breach and take reasonable corrective measures to eliminate the cause or source of the breach, and to the extent possible cure the breach. Vendor shall comply with all applicable federal and State laws and regulations regarding confidentiality of the records to which Vendor is permitted access.
- f. The provisions of this Section shall remain in full force and effect and otherwise survive the expiration, cancellation or termination of this Agreement or any extension thereof for a period of three (3) years following the last day that Vendor provides service, or as prescribed by statute, whichever is longer, or as determined by the Parties and included in the Scope of Work.
- g. Software in human-readable form provided by the Vendor (including, but not limited to, source code), that is not a "work made for hire" under the terms of this Agreement, shall be considered Vendor's confidential information whether or not it is marked as such. Data stored in the State's computer systems will be considered the State's confidential information, whether or not it is marked as such.
- h. The State shall use reasonable efforts to prevent the disclosure of Vendor's Confidential Information to any other person, unless such disclosure is required by law. The State may disclose Confidential Information to those employees or consultants with a legitimate need to know who agree in writing to confidentiality obligations consistent with this Agreement, including the obligation to use such

Confidential Information only for the purposes of this Agreement. Except as expressly stated in this Agreement, all materials containing Confidential Information are and remain Vendor's property.

- i. United States Internal Revenue Service TAX RETURN ACCESS OBLIGATIONS (The following clauses are mandated by the U.S. Internal Revenue Service).

In performance of this Agreement, Vendor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the State or its employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer or employee of Vendor or its authorized subcontractors will be prohibited.
3. All returns and return information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. Vendor certifies the data processed during the performance of this Agreement shall be completely purged from all data storage components of the computer facility used in performance of this Agreement, and no output will be retained by Vendor at the time the work is completed. If immediate purging of all data storage components is not possible, Vendor certifies any IRS data remaining in any storage component shall be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data shall be given to the State or its designee. When this is not possible, Vendor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and shall provide the agency with a statement containing the date of destruction, description of material destroyed and the method used.
6. No work involving information furnished under this Agreement shall be subcontracted without the specific approval of the IRS. It shall be the State's responsibility to obtain such approval upon receipt of notice from Vendor of its intended subcontractor(s).
7. Vendor shall maintain a list of employees authorized access. Such list shall be provided to the State and, upon request, the IRS reviewing office.

8. The IRS and the State shall have the right to send its officers and employees into the offices and plants of Vendor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where Vendor is found to be non-compliant with Agreement safeguards.

j. The following Civil and Criminal Sanctions may apply. These sanctions are not meant to be exclusive of additional penalties that may be authorized by law.

1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed in IRC Section 7213 and 7431 and set forth in 26 CFR 301.6103(n).

2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall notify each such officer or employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus, in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, the costs of the action. These penalties are prescribed by IRC Section 7213A and 7431.

3. Additionally, it is incumbent upon Vendor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made

applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- I. The Vendor shall have and maintain a disaster recovery plan which, at a minimum, provides for an alternate location and appropriate equipment for application processing, which would permit the efficient and effective continuation of activities following a disaster.

## **2.11 INDEMNIFICATION; CONSEQUENTIAL AND INDIRECT DAMAGES**

The Vendor shall indemnify and hold harmless the State, its officials, agents and employees, from and against any and all claims, damages, losses, settlements, judgments, costs and expenses, including attorney's fees (collectively Damages), arising solely out of or resulting from the Vendor's performance or attempted performance of its obligations under this Agreement; claims for infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the design of the project; and, any violation of this Agreement, provided however, that any such Damages are caused in whole or in part by an intentional or negligent act or omission by the Vendor, any subcontractor, agent, representative or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The Vendor shall indemnify and hold harmless the State, its officials, agents and employees, from and against any and all claims by an employee of the Vendor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The indemnification under this subsection shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Vendor or a subcontractor under Workers Compensation Acts, disability benefit acts or other employee benefit acts.

Neither party shall be liable to the other party for lost profits, indirect, special, punitive or consequential damages arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of any party to this Agreement, its subcontractor, employees, servants, representatives or agents, or arising under theories of strict liability or tort.

The obligations of the respective parties under this section shall survive the expiration or termination of this Agreement, including any extensions thereto, with respect to any occurrences within the term of this Agreement.

## **2.12 OFFSET BY STATE**

If the Vendor is in arrears in payment of any taxes due and payable to the State, the State may offset any taxes in arrears from payments to the Vendor under this Agreement.

## **2.13 PROPERTY DAMAGE**

The Vendor shall exercise its best efforts to prevent damage to property of the State in the course of performing its obligations under this Agreement. The Vendor shall replace or pay replacement costs of any property damaged by its operations. The Vendor shall restore damaged property to its condition prior to the damage at the sole expense of the Vendor. The State may elect in its sole discretion to repair or cause to have repaired any such property damaged by the Vendor and shall bill the Vendor the actual costs and expenses of such repair or replacement. The actual costs and expenses of any such repair or replacement may be deducted from the monthly payment to the Vendor until the actual costs and expenses have been paid in full. Such restoration shall be complete when judged satisfactory by the State.

## **2.14 PERFORMANCE BOND**

The Vendor shall furnish surety in the form of a performance bond of \$350,000 to the State for the faithful performance of the Agreement, with the additional obligation that the Vendor shall promptly pay all persons supplying labor or material in the performance of work pursuant to the Agreement. Such performance bond shall be furnished to the State as soon as practicable after the date on which the Vendor executes this Agreement and shall be maintained in full force and effect during the term of this Agreement and any extension thereof. The performance bond shall be renewed annually by the Vendor until the expiration of the initial term of the Agreement and any extension thereof. State and Vendor agree to review annually the amount of the performance bond. Failure on the part of the Vendor to furnish such bond in the time stated or to maintain the bond in full force and effect during the term of this Agreement or any extension thereof shall be cause for the State to declare the Vendor in default under this Agreement.

## **2.15 FIDELITY BOND**

Prior to commencing its responsibilities under this Agreement, the Vendor shall furnish a fidelity bond in the amount of \$100,000 to the State to insure the faithful and honest performance of the Vendor's officers, directors, employees, agents, representatives and subcontractors. This bond shall be maintained in full force and effect during the term of this Agreement and any extension thereof. Such fidelity bond shall be

furnished to the State as soon as practicable after the date on which the Vendor executes this Agreement. The fidelity bond shall be renewed annually by the Vendor until the expiration of the initial term of the Agreement and any extension thereof.

## 2.16 SAFETY OF PERSONS AND PROPERTY

The Vendor shall maintain in full force and effect during the term of this Agreement and any extensions thereof, liability and property damage insurance to protect the Vendor, its subcontractors, if any, and the State from claims for damage which may arise from operations under this Agreement, and the amount of such insurance shall not be less than the following:

<ul style="list-style-type: none"> <li>General Liability (including contractual liability) written on an occurrence basis.</li> </ul>	<i>General Aggregate</i>	\$3 Million
	<i>Product Liability Aggregate</i>	\$1 Million
	<i>Personal Injury</i>	\$1 Million
	<i>Comprehensive Aggregate</i>	\$1 Million
	<i>Each Occurrence</i>	\$1 Million
<ul style="list-style-type: none"> <li>Automobile liability, including any auto, hired autos and non-owned autos</li> </ul>	<i>Combined Single Limit</i>	\$1 Million
<ul style="list-style-type: none"> <li>Workers Compensation and Employer Liability</li> </ul>	<i>As required by Iowa law</i>	
<ul style="list-style-type: none"> <li>Property Damage</li> </ul>	<i>Each Occurrence</i>	\$1 Million
	<i>Aggregate</i>	\$1 Million

The Vendor shall arrange with its insurer for notice of cancellation of the required insurance coverages to be directed to the State in addition to any notices of cancellation that may be directed to the Vendor. The Vendor's insurer shall state in the certificate of insurance that no cancellation of the insurance is effective without at least Thirty (30) Days prior written notice to the State. All insurance coverage required by this Agreement shall provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

The Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- A. All employees on the job site and all other persons who may be affected thereby;
- B. The public, including the State's staff and employees;

- C. All the property and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Vendor or any of its subcontractors;
- D. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and other improvements.

## **2.17 RECEIVERSHIP**

The Vendor shall immediately, and not later than two business days after any such filing, notify the State, in writing, if: (a) the Vendor files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; (b) the Vendor files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the United State bankruptcy code, as amended; (c) the Vendor is adjudicated bankrupt, makes an assignment for the benefit of creditors, applies for or consents to the appointment of a receiver or trustee for all or any part of its property; (d) the Vendor institutes dissolution or liquidation proceedings with respect to its business; (e) an order is entered approving an involuntary petition to reorganize the business of the Vendor or to effect a plan or other arrangement with creditors or appointing a receiver or trustee for the Vendor for all or part of its property; or (f) if a writ or warrant of attachment, execution, distraint, levy, possession, or any similar process which may materially affect the operation of the Vendor, is issued by any court against all or any material part of the Vendor's property.

In the event that said petition, writ or warrant is not dismissed or a stay of foreclosure obtained or said appointment, assignment, or proceedings are not rescinded or terminated within One Hundred Twenty (120) days of the issuance, making, or commencement thereof, and the effect thereof is to materially impede or frustrate the ability of the Vendor to fulfill its obligations under this Agreement, then the State may terminate this Agreement without penalty, unless: (a) within One Hundred Twenty (120) days after the election or appointment, any receiver or trustee of the Vendor, or the Vendor as a debtor-in-possession in connection with any reorganization or similar proceedings, shall have remedied any uncured failure to comply with any provision of this Agreement; and, (b) within said One Hundred Twenty (120) days, the receiver or trustee, or the Vendor as a debtor-in-possession, shall have executed an agreement with the State, which shall have been approved by the court having jurisdiction, whereby the receiver or trustee, or the Vendor in its capacity as a debtor-in-possession, assumes all obligations and agrees to be bound fully by each and every provision of this Agreement.



## **2.18 OBLIGATIONS BEYOND AGREEMENT TERM**

All obligations of the State and the Vendor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

## **2.19 AUTHORIZATION**

Each party to this Agreement represents and warrants to the other that:

1. It has the right, power and authority to enter into and perform its obligations under this Agreement.
2. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

## **2.20 SOVEREIGN IMMUNITY**

The State specifically reserves the defense of sovereign immunity as allowed by state or federal law or regulations for any claim arising out of or related to the duties and obligations imposed by this Agreement.

## **2.21 WORKS MADE FOR HIRE**

All information, reports, studies, object or source code, flow charts, diagrams, and other tangible and intangible material of any nature whatsoever produced by or as a result of any of the services and all copies of any of the foregoing shall be the sole and exclusive property of the State, and all such material and all copies shall be deemed "works made for hire" of which the State shall be deemed the author.

The State shall have the right to audit the source codes for any software developed by the Vendor and used in connection with this Agreement. The source codes shall be deposited in a location mutually agreeable to the parties. The source codes for the software shall be audited at least once annually during the term of this Agreement and any extension thereof.

To the extent that the materials are not deemed "works made for hire," the Vendor hereby irrevocably grants, assigns, transfers, and sets over to the State all legal and equitable right, title and interest of any kind, nature or description in and to the materials and the Vendor shall be entitled to make absolutely no use of any of the materials except as may be expressly permitted in this Agreement.

Notwithstanding State's ownership of the Intellectual Property, State acknowledges and agrees (i) that Vendor has the right to re-use any of its know-how, ideas, concepts, methods, processes, or similar information, however characterized, whether in tangible or intangible form, and whether used by Vendor in the performance of services or not, at any time and without limitation, (ii) that Vendor retains ownership of any and all of its prior-existing intellectual property rights including but not limited to, all methods, concepts, designs, reports, programs, and templates. Vendor hereby grants to State a non-exclusive, perpetual license to the prior-existing intellectual property (iii) State hereby grants to Vendor a non-exclusive, perpetual license with the right to sublicense to the intellectual property created by this agreement.

## **2.22 MISCELLANEOUS**

- A. This Agreement shall be interpreted in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall only be commenced in Polk County, Iowa, District Court or in the United States District Court for the Southern District of Iowa. This provision shall not be construed as waiving any immunity to suit or liability that may be available to the State.
- B. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall be valid and enforceable.
- C. Failure of the State at any time to require strict performance of any provision of this Agreement shall not constitute a waiver of that provision nor in any way limit enforcement of the provision.
- D. The parties agree to execute any additional documents necessary to effectuate this Agreement.

## **2.23 REQUIRED PROVISIONS**

- A. Should the Vendor fail either to include in the quoted price, or to deliver to the State any of the items necessary for the Vendor's operation pursuant to its Response to RFP BD80400S305, and any negotiated agreements between the parties, the Vendor shall be required to install the same or provide the service at the Vendor's own expense, prior to the date on which the Agreement is implemented.
- B. There shall be no substitutions of materials or services specified herein without the prior written consent of the State.
- C. Vendor shall be responsible for the performance of any subcontractors who are retained by the Vendor in the performance of this Agreement.

## **2.24 INDEPENDENT CONTRACTOR**

The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Vendor nor its employees shall be considered employees of the Agency or the State of Iowa for federal or state tax purposes.

## **2.25 ACCOUNTABLE GOVERNMENT ACT**

The terms of the Accountable Government Act provided herein in Appendix VI, shall apply to any contract resulting from RFP BD80400S305.

(Signature Pages Follow This Page.)

**SIGNATURE PAGE (VENDOR)**

\_\_\_\_\_  
**VENDOR** (Name of Company)

By: \_\_\_\_\_ (\_\_\_\_\_)  
(Signature of Authorized Representative) (Please Print Name of  
Authorized Representative)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public, in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that s/he is the authorized representative of the above named Vendor, executing the foregoing instrument, that the instrument was signed on behalf of the above named Vendor by authority of its \_\_\_\_\_, and that s/he acknowledged the execution of the instrument to be the voluntary act and deed of the above named Vendor, and by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

**SIGNATURE PAGE (STATE)**

**STATE OF IOWA**

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**STATE OF IOWA**

**By: Michael D. Ralston, Director  
Iowa Department of Revenue**

**State of Iowa**

**County of Polk**

**On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public, in and for the State of Iowa, personally appeared, to me personally known, who, being by me duly sworn, did say that s/he is the authorized representative of the State of Iowa, executing the foregoing instrument, that the instrument was signed on behalf of the State of Iowa, by the authority of its Statutes, and that s/he acknowledged the execution of the instrument to be the voluntary act and deed of the State, and by it voluntarily executed.**

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**Notary Public in and for the State of Iowa**